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ARIZONA CORPORATION COMMISSION
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DATE: NOVEMBER 23, 2015
DOCKET NO.: T-20925A-15-0113
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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

WANRACK, LLC
(FACILITIES- BASED CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 2, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 8, 2015 and DECEMBER 9, 2015


For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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JODI JERICH
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
4 BOB BURNS
5 DOUG LITTLE
5 TOM FORESE

7 IN THE MATTER OF THE APPLICATION OF
7 WANRACK, LLC FOR A CERTIFICATE OF
8 CONVENIENCE AND NECESSITY TO PROVIDE
8 PRIVATE LINE TRANSPORT SERVICES IN
9 ARIZONA.

DOCKET NO. T-20925A-15-0113

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: October 8, 2015
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey¹
13 APPEARANCES: Mr. Timothy J. Sabo, SNELL & WILMER, on behalf of
14 the WANRack, LLC; and
15 Mr. Brian Smith, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
Corporation Commission.

17 **BY THE COMMISSION:**

18 On April 3, 2015, WANRack, LLC ("WANRack" or the "Company") filed with the Arizona
19 Corporation Commission ("Commission") an application for a Certificate of Convenience and
20 Necessity ("CC&N"), to provide private line telecommunication services and for a determination that
21 its proposed services are competitive in Arizona.

22 On April 7, 2015, WANRack filed its Certificate of Good Standing.

23 On April 24, 2015, two letters were docketed from the Yuma Elementary School and the
24 Yuma Union High School Districts in support of the Company's application.

25 On May 5, 2015, WANRack filed a revised proposed tariff for its requested services.

26 On August 20, 2015, the Commission's Utilities Division ("Staff") filed a Staff Report in this
27 matter, recommending approval of WANRack's application, subject to certain conditions.

28 _____
¹ Administrative Law Judge Sasha Paternoster presided over the hearing.

1 On August 21, 2015, the Company filed a Request for Expedited Hearing and Unopposed
2 Motion to Allow Telephonic Testimony.

3 On August 24, 2015, by Procedural Order, the hearing in the matter was set for October 8,
4 2015, other procedural deadlines were established, and the Company's request for an expedited
5 hearing and request for its witness to appear telephonically were granted.

6 On October 8, 2015, a full public hearing was held as scheduled before a duly authorized
7 Administrative Law Judge ("ALJ") of the Commission. Staff and WANRack appeared through
8 counsel and presented testimony and evidence. No members of the public appeared to provide public
9 comment on the application. At the conclusion of the hearing, the matter was taken under
10 advisement pending submission of late-filed exhibits.

11 On October 8, 2015, Staff filed a Notice of Filing Late-Filed Exhibit.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. WANRack is a foreign limited liability company organized under the laws of the State
17 of Kansas.²

18 2. WANRack is a privately held company and has its headquarters is located in Lenexa,
19 Kansas.

20 3. WANRack is authorized to transact business in Arizona and is in good standing with
21 the Commission's Corporations Division.³

22 4. WANRack's application requests authorization to provide private line transport
23 services in Arizona.

24 5. Notice of WANRack's application was given in accordance with the law.

25 6. Staff recommends approval of WANRack's application for a CC&N to provide private
26 line transport services subject to the following conditions:

27 _____

28 ² Exhibit A-1.

³ *Id.* at Attachment A-1.

- (a) WANRack comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
- (b) WANRack abide by the quality of service standards that were approved by the Commission for Qwest Corporation d/b/a CenturyLink in Docket No. T-01051B-13-0199 (Decision No. 74208);
- (c) WANRack be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Company is the only provider of local exchange service facilities;
- (d) WANRack be required to notify the Commission immediately upon changes to WANRack's name, address or telephone number;
- (e) WANRack cooperate with Commission investigations including, but not limited to customer complaints;
- (f) The rates proposed by this filing are for competitive services. In general, rates for all competitive services are not set according to rate of return regulation. Staff obtained information from the Company related to its proposed fair value rate base. Staff has reviewed the rates to be charged by WANRack and believes they are just and reasonable as they are comparable to other competitive local carriers offering service in Arizona. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis; and
- (g) The Commission authorize WANRack to discount its rates and service charges to the marginal cost of providing the services.

7. Staff further recommends that WANRack comply with the following items and if WANRack fails to do so, that the Company's CC&N be considered null and void after due process.

- a. WANRack shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application;
- b. WANRack shall notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
- c. WANRack shall abide by the Commission-adopted rules that address Universal Service in Arizona. Arizona Administrative Code ("A.A.C.") R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). WANRack will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

...

...

1 **Technical Capability**

2 8. The Company is currently offering telecommunications services similar to those
3 requested in Arizona in both Missouri and Wyoming. The Company is also authorized to provide
4 telecommunication services in the states of Kansas and Texas. As part of Staff's review of the
5 application, Staff confirmed that WANRack is registered or certificated in each of the above
6 referenced jurisdictions.

7 9. According to the Company's witness, WANRack provides private line services to
8 school districts by connecting a dedicated fiber optic line between customer facilities.⁴ The Company
9 proposes to build, own and operate a private fiber optic network in Arizona to provide service to its
10 customers. In the future, the Company states it may resell its services, obtained from carriers such as
11 CenturyLink QC, to customers.

12 10. WANRack will handle customer services issues through its Network Operations
13 Center, which provides 24/7 service to customers, via a toll free number. Through its Network
14 Operations Center, WANRack can remotely provide troubleshooting services to its customers in
15 Arizona.

16 11. The Company's three senior members have an average of over fourteen years'
17 experience in the telecommunications industry.

18 12. Staff states it believes the Company has the technical experience to provide its
19 proposed services in Arizona.

20 **Financial Capability**

21 13. Staff states that the Company provided unaudited financial statements for the years
22 ending December 31, 2013 and 2014. WANRack's financial statements for the year ending
23 December 31, 2013, listed total assets of \$60,924; total equity of \$113,600; and a net income of
24 negative \$52,676. For the year ending December 31, 2014, WANRack listed total assets of
25 \$404,655; total equity of \$230,246; and a net income of negative \$70,678.

26 ...

27
28 ⁴ Tr. at 7.

1 **Rates and Charges**

2 14. Staff believes WANRack's rates will be heavily influenced by the market. Staff states
3 that the Company will have to compete with other incumbent local exchange carriers ("ILEC") and
4 competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") to provide its
5 proposed services in Arizona. Based on the competitive environment in which WANRack will be
6 operating, Staff believes the Company will not be able to exert any market power and that the
7 competitive process will result in just and reasonable rates.

8 15. Staff states that the Company estimated it will have a fair value rate base of \$1.4
9 million at the end of twelve months of operations. Staff states that although it considered the
10 Company's fair value rate base information, it did not accord that information substantial weight in
11 its analysis because Staff believes the Company's rates will ultimately be heavily influenced by the
12 market.

13 16. WANRack has requested a determination that its proposed services are competitive in
14 Arizona. Staff states that the Company's customers will be "sophisticated schools, government and
15 business customers that typically negotiate contract rates through a competitive process with ultimate
16 rates provided on an individual case basis."⁵ Staff also states that all other customers will receive
17 services based on the rates established in the Company's proposed tariff.

18 17. Staff reviewed the proposed rates that WANRack proved for its services and Staff
19 believes those rates are just and reasonable and are competitive in Arizona.

20 18. Pursuant to A.A.C. R14-2-1109, the rates charged for each service the Company
21 proposes to provide may not be less than the Company's total service long-run incremental cost of
22 providing that service.

23 19. Because WANRack's proposed tariff states that the Company may offer rates based
24 on an individual case basis ("ICB"), the Company is placed on notice that all ICB contracts shall
25 comply with Arizona Revised Statutes ("A.R.S.") §40-334, as well as A.A.C. R14-2-1115. A.R.S.
26 §40-334(A) states that public service corporations "shall not, as to rates, charges, service, facilities or
27

28 ⁵ Exhibit S-1 at 3.

1 in any respect, make or grant any preference or advantage to any person or subject any person to any
2 prejudice or disadvantage.

3 **Complaint Information**

4 20. WANRack has not had an application for authority to provide service denied in any
5 state/jurisdiction.

6 21. The Commission's Consumer Services Division reported that through April 14, 2015,
7 no consumer complaints, inquiries, or opinions had been filed against WANRack.

8 22. The Company is in good standing with the Commission's Corporations Division.

9 23. Staff's review of the Company's application showed that no complaints had been filed
10 against WANRack with the Federal Communications Commission.

11 24. WANRack states that neither it nor its officers, directors, partners or managers have
12 been or are currently involved in any formal or informal complaint proceeding before any state or
13 federal regulatory agency, commission, administrative or law enforcement agency.⁶

14 25. WANRack also states that its officers, directors, partner, or managers have not been
15 involved in any civil or criminal investigations, or had judgments entered in any civil matter, or by
16 any administrative or regulatory agency, or been convicted of any criminal acts with the last ten (10)
17 years.⁷

18 **Competitive Analysis**

19 26. WANRack's application requests that its proposed services be classified as
20 competitive in Arizona. Staff believes that WANRack's proposed services should be classified as
21 competitive because the Company will have to compete with IXC's, ILEC's, and CLEC's to gain a
22 share of the market in which it will be operating. Based on the above factors, Staff concludes that
23 WANRack's proposed services should be classified as competitive in Arizona.

24 27. We find that Staff's recommendations are reasonable and should be adopted. We also
25 find that WANRack's proposed services are competitive in Arizona.

26 ...

27 _____
28 ⁶ Exhibit A-1.

⁷ *Id.*

CONCLUSIONS OF LAW

1. WANRack is a public service corporation within the meaning of Article XV of the Arizona Constitution, A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over WANRack and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. §40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunication services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for WANRack to provide private line telecommunications services as set forth in its application.

6. WANRack is a fit and proper entity to receive a CC&N authorizing it to provide intrastate telecommunications services in Arizona, subject to Staff's recommendations as set forth herein.

7. WANRack's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Pursuant to Article XV of the Arizona Constitution, as well as the Commission's Rules for Competitive Telecommunications Services (A.A.C. R14-201101 et. seq.), it is just and reasonable and in the public interest for WANRack to establish rates and charges that are not less than WANRack's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of WANRack, LLC for a Certificate of Convenience and Necessity to provide private line transport services in Arizona, is hereby approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 6 and 7.

IT IS FURTHER ORDERED that if WANRack, LLC fails to comply with the Staff recommendations described in Findings Fact No. 7, the Certificate of Convenience and Necessity

granted herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that WANRack, LLC shall comply with A.R.S. §40-334 as well as A.A.C. R14-2-1115 with respect to its contracts provided on an individual case basis.

IT IS FURTHER ORDERED that the services proposed WANRack, LLC's application are competitive in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
YBK:tv

SERVICE LIST FOR:

WANRack, LLC

DOCKET NO.:

T-20925A-15-0113

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